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**Sep 05 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

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Case No. 2024-001276

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Gateway Mortgage Group, LLC,

Respondent,

v.

Barbara A. Shurtleff,

APPELLANT,

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RETURN AND MEMORANDUM IN OPPOSITION TO APPELLANT'S  
MOTION TO REINSTATE APPEAL

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Chad W. Burgess, Esq.  
(S.C. Bar No.: 72520)  
BROCK & SCOTT, PLLC  
3800 Fernandina Road, Suite 110  
Columbia, South Carolina 29210  
(803) 454-3540  
*Attorney for Respondent*

**NOW COMES** Respondent, Gateway Mortgage Group, LLC, by and through its undersigned attorney, and pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, hereby submits its Return and Memorandum in Opposition to the Motion to Reinstate Appeal filed by Appellant on August 27, 2024, requesting reinstatement of her appeal averring as follows:

### **BRIEF PROCEDURAL HISTORY**

This matter stems from a verified suit on contract filed by Respondent on October 6, 2023. Appellant was served with the complaint on October 19, 2023. Appellant failed to answer or otherwise plead to Respondent's Complaint and, as a result, counsel for the Plaintiff filed an affidavit of default on December 7, 2023. The case was referred to The Honorable Marvin H. Dukes, III, as Master in Equity for Beaufort County on December 21, 2023. Respondent filed a motion for default judgment on January 26, 2024. A hearing on Respondent's motion was originally scheduled for May 2, 2024. The hearing was continued at Appellant's request and rescheduled for June 3, 2024, via Webex. Attached hereto and incorporated herein as **Exhibits "1" and "2"** are copies of filed notices of the June 3, 2024 hearing provided to Appellant by the Master in Equity's office and counsel for the Plaintiff respectively. Appellant appeared and participated in the June 3, 2024 hearing.

On June 14, 2024, Judge Duke's entered an order granting Respondent's motion for default judgment. Counsel for Respondent's office served Appellant with a copy of the final order by mailing the same to her at her primary mailing address in Stafford, Virginia on June 19, 2024. Appellant's notice of appeal was filed on August 5, 2024.

On August 12, 2024, this Court issued an order dismissing Appellant’s appeal based upon the default judgment not being appealable. On August 27, 2024, Appellant submitted the subject motion to reinstate the appeal.

### **ARGUMENT AND CITATION OF AUTHORITY**

The dismissal of this appeal was proper as well reasoned in this Court’s August 12, 2024, order. Appellant seeks review of an order granting default judgment. Such orders are not appealable. *Winesett v. Winesett*, 287 S.C. 332, 338 S.E.2d 340 (1985). In *Winesett*, the Supreme Court spelled out the reasoning for the general rule barring appeal from default judgments:

An early justification for this rule was that a defendant who does not appear and answer “has no status in court which will enable him to appeal from the judgment rendered.” *Washington v. Hesse*, 56 S.C. at 29, 33 S.E. at 787. An additional justification is that a party appealing a default judgment will ordinarily be precluded from raising any issues on appeal because they were not first presented below. See *American Hardware Supply Co., Inc. v. Whitmire*, 278 S.C. 607, 300 S.E.2d 289 (1983); *Murphy v. Hagan*, 275 S.C. 334, 271 S.E.2d 311 (1980). Finally, the appellant will often not be able to meet his burden of providing this Court with a record sufficient to permit an adequate review. See *Hamilton v. Greyhound Lines East*, 281 S.C. 442, 316 S.E.2d 368 (1984); *Germain v. Nichol*, 278 S.C. 508, 299 S.E.2d 335 (1983).

*Id* at 333-334. Appellant cites no authority to support her request to have the appeal reinstated or contradict the well-established binding precedent barring her appeal.

Rather, Appellant merely asserts that she was not given an opportunity to be heard and that there was a procedural oversight in entering the default judgment. These assertions are without merit and do not support reinstating the appeal. Appellant was given notice of the June 3, 2024 hearing by both the Master in Equity’s office and by Respondent. She appeared and participated in the hearing. Simply put, Appellant was heard and there was no procedural oversight in entering the order for default judgment.

Appellant also asserts the concept of appellate resuscitation as a principle that, “offers the Appellant the chance to have her case reinstated on appeal from a summary judgment”. While it is unclear what Appellant means by the “principle of Appellate Resuscitation” or how it would apply to this case, Appellant’s citation of the concept as a means to reinstate an appeal from a summary judgment demonstrates that the concept, if such exists, would apply to this case. The judgment being appealed from here is a default judgment and it is not appealable for the reasons stated in this Court’s August 12, 2024 order. As such, Appellant’s motion to reinstate should be denied and the case remitted to the Circuit Court.

### **CONCLUSION**

Appellant’s appeal seeks review of an order granting Respondent’s motion for default judgment. On August 12, 2024, this Court dismissed the appeal based upon the well settled legal principal that an order for default judgment not being appealable. Appellant’s request to reinstate her appeal cites no legally or factually cognizable grounds for reconsidering this Court’s dismissal of her appeal. Based upon the foregoing, Respondent respectfully requests that Appellant’s motion be denied and for such other and further relief to be granted to Respondent as this Court deems appropriate.

**[SIGNATURE PAGE TO FOLLOW]**

Respectfully submitted,

BROCK AND SCOTT, PLLC

*s/Chad W. Burgess*

Chad W. Burgess, S.C. Bar No.: 72520

3800 Fernandina Road, Suite 110

Columbia, South Carolina 29210

(803) 454-3540

*Attorney for Respondent Gateway Mortgage  
Group, LLC*

Dated: September 5, 2024

**McLeod, Heather**

**From:** McLeod, Heather  
**Sent:** Thursday, May 2, 2024 4:29 PM  
**To:** Chad Burgess; Barbara Shurtleff; Lauren Browder  
**Cc:** Browne, Jared  
**Subject:** RE: 2023CP0701918 Gateway Mortgage Group LLC vs Barbara A Shurtleff

**Importance:** High

**Categories:** Notice of Hearing/Trial/Conference Call

Good Afternoon:

Per the Judge, he continued today's final hearing and rescheduled it for June 3<sup>rd</sup>, 2024, at 9:15 a.m. Please mark your calendars, as this is the only notice you will receive from the Court.

This will be a WebEx hearing and you will receive the WebEx info shortly if you have not already received it. Please send notice and the WebEx info to anyone who needs to participate in this hearing.

Also, please see the below regarding your Court Reporter responsibilities.

**Attention:**

**We no longer have a Court Reporter, therefore you are responsible for bringing your own, should you choose to have one.**

**If there is even a possibility of live testimony at the hearing, you are REQUIRED to bring your own Court Reporter. Failure to do so will result in the cancellation and rescheduling of the hearing.**

**Please contact us immediately if you are:**

- 1. Waiting on a ruling and it has been more than 30 days.**
- 2. Have a motion older than 30 days and need to schedule a hearing date.**
- 3. Ready to schedule a Trial/Final Hearing.**

**Thanking You in Advance,**

**Heather R. H. McLeod,  
Judicial Assistant to  
Hon. Marvin H. Dukes, III  
Beaufort County Master In Equity  
P. (843) 255-5710  
F. (843) 255-9505  
[hmcleod@bcgov.net](mailto:hmcleod@bcgov.net)**

**Beaufort County Courthouse  
Post Office Drawer 1228  
Beaufort, SC 29901**

**Beaufort County Courthouse**

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

Gateway Mortgage Group, LLC,  
Plaintiff,

vs.

Barbara A. Shurtleff,

Defendant.

IN THE COURT OF COMMON PLEAS  
C/A NO.: 2023-CP-07-01918

**NOTICE OF MOTION HEARING**  
(By Video/Telephone Conference)

YOU WILL PLEASE TAKE NOTICE THAT, by virtue of the Order of Reference issued in the above-entitled cause, The Honorable Marvin H. Dukes, as Master in Equity for Beaufort County, has appointed June 3, 2024, at 9:15 AM, via the Courts WebEx video conference system, as the time and place for holding a Motion Hearing on Plaintiff's Motion for Default Judgment. The WebEx Information is as follows:

Join from the meeting link

[REDACTED]

Join by meeting number

Meeting number (access code) [REDACTED]

Meeting password: [REDACTED]

Tap to join from a mobile device (attendees only)

[REDACTED]

Join by phone

[REDACTED]

Global call-in numbers

Join from a video system or application

[REDACTED]

You can also dial [REDACTED] and enter your meeting number.

Need help? Go to [REDACTED]

You are requested to notify Brock & Scott, PLLC at phone number (803) 454-3540 of your

intention to appear. By so doing, our firm would be able to contact you in the event the hearing is canceled.

s/ Chad W. Burgess  
SC Bar #: 72520  
3800 Fernandina Road, Suite 110  
Columbia, SC 29210  
Phone 803-454-3540  
Attorney for Plaintiff  
Chad.Burgess@brockandscott.com

Dated: May 14, 2024  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

Gateway Mortgage Group, LLC,  
Plaintiff,

vs.

Barbara A. Shurtleff,  
Defendant.

IN THE COURT OF COMMON PLEAS  
C/A NO.: 2023-CP-07-01918

**CERTIFICATE OF SERVICE BY MAIL**

The undersigned hereby certifies that he/she is an employee of Brock & Scott, PLLC, and is a person of such age and discretion as to be competent to serve papers.

That on 5/14/24, he/she served a copy of the Notice of Motion Hearing by placing said copy in a postage paid envelope addressed to each of the following persons at the address stated below, which is the last known address, and by depositing said envelope and contents in the U.S. Mail.

Pleading: Notice of Motion Hearing  
Party (ies) Served:

Barbara A. Shurtleff  
61 Estate Row  
Stafford, VA 22554



Lauren Browder  
Brock & Scott, PLLC  
Columbia, South Carolina

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APPEAL FROM BEAUFORT COUNTY  
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Case No. 2024-001276

Gateway Mortgage Group, LLC,

Respondent,

v.

Barbara A. Shurtleff,

APPELLANT,

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 5, 2024, she served a copy of Respondent's Return and Memorandum in Opposition to Appellant's Motion to Reinstate Appeal, and Certificate of Service upon the person below by depositing the same in the U.S. Mail with proper postage affixed and addressed as follows:

Barbara Shurtleff  
61 Estate Row  
Stafford, VA 22554

Lauren Browder  
BROCK & SCOTT, PLLC